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[Additional Defendants' Counsel continued on next page]

Attorneys for Defendants MindGeek S.à r.l.,
MG Freesites Ltd, MG Premium Ltd,
MindGeek USA Incorporated, MG Global
Entertainment Inc., and 9219-1568 Quebec
Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

K.A.,

Plaintiff,

v.

MINDGEEK S.A.R.L. a foreign entity;
MG FREESITES LTD, a foreign entity;
MINDGEEK USA INCORPORATED, a
Delaware corporation; MG PREMIUM
LTD, a foreign entity; MG GLOBAL
ENTERTAINMENT INC., a Delaware
corporation; 9219-1568 QUEBEC, INC.,
a foreign entity; BERND BERGMAIR, a
foreign individual; FERAS ANTOON, a
foreign individual; DAVID TASSILLO, a
foreign individual; VISA INC., a
Delaware corporation; REDWOOD
CAPITAL MANAGEMENT, LLC, a
Delaware limited liability company;
REDWOOD DOE FUNDS 1-7;
COLBECK CAPITAL MANAGEMENT,
LLC, a Delaware limited liability
company; COLBECK DOE FUNDS 1-3,

Defendants.

Case No. 2:24-cv-04786-WLH-ADS

**DECLARATION OF ESTEBAN
MORALES FABILA IN
SUPPORT OF LOCAL CIVIL
RULE 79-5.2.2 APPLICATION
FOR LEAVE TO FILE UNDER
SEAL MATERIAL
DESIGNATED BY ANOTHER
PARTY AS CONFIDENTIAL
PURSUANT TO PROTECTIVE
ORDER [DKT 95]**

Hearing Date: January 31, 2025
Hearing Time: 1:30 p.m.
Courtroom: 9B
Judge: Hon. Wesley L.
Hsu

Complaint Filed: June 7, 2024
Trial Date: None Set

1 [Additional Defendants' Counsel continued from caption page]

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19 *S.à r.l., MG Freesites Ltd, MG Premium*

20 *Ltd, MindGeek USA Incorporated, MG*

21 *Global Entertainment Inc., and 9219-1568*

22 *Quebec Inc.*

DECLARATION OF ESTEBAN MORALES FABILA

I, Esteban Morales Fabila, declare:

1. I am a member of the Bar of the State of California admitted to appear before this Court, and a member of the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., counsel for Defendants MindGeek S.à r.l., MG Freesites Ltd, MG Premium Ltd, MindGeek USA Incorporated, MG Global Entertainment Inc., and 9219-1568 Quebec Inc. (collectively the “MindGeek Defendants”).

2. I make this declaration in support of the Local Civil Rule 79-5.2.2 Application for Leave to File Under Seal Material Designated as Confidential Pursuant to a Protective Order, Dkt. 95, filed by Plaintiff K.A. in the above-referenced matter and Plaintiffs in the additional thirteen (13) related lawsuits before this Court, *see* ECF No. 52, Ex. 1 (collectively “Plaintiffs”).

3. Plaintiffs seek to seal materials designated as “Confidential” or “Highly Confidential” by the MindGeek Defendants and/or another party under the Stipulated Protective Order entered by the Court on October 14, 2022, Dkt. 187, and the Amended Stipulated Protective Order entered by the Court on December 13, 2024, Dkt. 516, in the related case, *Fleites v. MindGeek S.a.r.l. et al. et al.*, Case No. 21-cv-04920-WLH-ADS filed in support of their omnibus opposition to Defendants’ motions to dismiss, Dkt. 93. *See* Dkt. 95.

4. This information constitutes the MindGeek Defendants’ non-public, proprietary information and trade secrets, including: (1) paragraphs 11-13 of the Expert Declaration in Support of Plaintiffs’ Omnibus Opposition, which refers to confidential corporate structure and tax information; (2) confidential information relating to the operations of the MindGeek entities, including sensitive employment information, allocation of operating expenses, partner and supplier information, corporate/ownership structure, strategic plans and investment strategies; (3) confidential intellectual property licensing information; (4) confidential information

relating to the payments of dividends and compensation by the MindGeek entities, economic rights of shareholders, the agreed-upon governance of the MindGeek entities and a share purchase agreement; (5) confidential business strategy regarding relationships with vendors that, if disclosed, could harm the MindGeek Defendants' competitive standing, communications regarding internal business practices related to human moderation of content uploaded on the MindGeek websites, which should not be made public in the interest of public safety, to ensure the efficacy of the moderation policies to block content in violation of the Pornhub Terms of Service; (6) confidential details of, and actions taken related to, a loan agreement between certain MindGeek Defendants and third-party lenders; (7) confidential and sensitive audited financial statements, financial reporting packages and financial information of certain MindGeek Defendants and executives; (8) confidential terms of service agreements, hosting agreements, server cost sharing agreements and termination agreements; (9) confidential corporate structuring memorandums, a management presentation, a financial transfer-pricing study prepared by Raymond Chabot Grant Thornton LLP and its affiliates for tax planning purposes, and other tax planning advice; and (10) Sensitive PII about employees and non-parties, such as names and titles.

5. Specifically, Plaintiffs request that the following materials be filed under seal:

Bowe Decl. Ex.	Bates	Document
	---	Redacted text in Plaintiffs' Omnibus Opposition which references the designated materials
	---	Redacted text in Declaration of Michael J. Bowe ("Bowe Decl.") which references the designated materials

Bowe Decl. Ex.	Bates	Document
1	---	June 1, 2023 Andreou Deposition Transcript (excerpted)
3	---	June 14, 2023 Antoon Deposition Transcript (excerpted)
4	---	June 15, 2023 Bergmair Deposition Transcript (excerpted)
5	---	June 16, 2023 Tassillo Deposition Transcript (excerpted)
6	Bergmair_Fleites_00002186	October 15, 2013 Manwin Holding S.a.r.l., Project No Name, Step Memorandum
7 ¹	MindGeek_Fleites_00000376	2018 Report and Financial Statements for MG Freesites Ltd
7	MindGeek_Fleites_00000413	2019 Report and Financial Statements for MG Freesites Ltd
7	MindGeek_Fleites_00000456	2014 Report and Financial Statements for MG Freesites Ltd
7	MindGeek_Fleites_00000491	2015 Report and Financial Statements for MG Freesites Ltd
7	MindGeek_Fleites_00000527	2017 Report and Financial Statements for MG Freesites Ltd
7	MindGeek_Fleites_00000564	2016 Report and Financial Statements for MG Freesites Ltd
8	MGGT000008	July 1, 2014 Alchemy Capital Planning LLC, Memorandum
9	---	Expert Declaration in Support of Plaintiffs' Omnibus Opposition
10	MindGeek_Fleites_00008490	April 2017 Confidential Information Memorandum - MindGeek S.a.r.l.
11	MindGeek_Fleites_00008508	July 2015 Confidential Information Memorandum - MindGeek S.a.r.l.

¹ The Declaration of Lauren Tabaksblat erroneously lists this document as Exhibit 8.

Bowe Decl. Ex.	Bates	Document
12	Tassillo_Fleites_00000914	March 16, 2023 Share Pledge Agreement
13	MindGeek_Fleites_00097925	Excel spreadsheet for MG Premium Ltd.'s list of suppliers with expenses of \$500,000 and more expensed in Website operating expenses
14	MindGeek_Fleites_00097926	Excel spreadsheet for MG Freesites Ltd.'s List of suppliers with expenses of \$500,000 and more expensed in Website operating expenses
15	MindGeek_Fleites_00008664	May 2014 Confidential Information Memorandum - MindGeek S.a.r.l.
16	MindGeek_Fleites_00098687	MG Freesites Ltd; List of Suppliers with expenses of \$500,000 and more expenses in Website operating expenses
17	MindGeek_Fleites_00098688	MG Premium Ltd; List of Suppliers with expenses of \$500,000 and more expenses in Website operating expenses
18	---	September 22, 2022 Defendant Feras Antoon's Responses and Objections to Plaintiff's First Set of Interrogatories
19	---	September 22, 2022 Defendant Bernd Bergmair's Objections and Responses to Plaintiff's First Set of Interrogatories
19	---	June 14, 2023 Defendant Bernd Bergmair's Second Supplemental Responses and Objections to Plaintiff's First Set of Interrogatories
19	---	June 15, 2023 Defendant Bernd Bergmair's Responses and Objections to Plaintiff's Second Set of Interrogatories
20	Bergmair_Fleites_00000001	Emails between MindGeek Employees
20	Bergmair_Fleites_00000003	Letter from Visa and National Center on Sexual Exploitation
20	Bergmair_Fleites_00000009	Internal MindGeek Notes; "The news media"

Bowe Decl. Ex.	Bates	Document
20	Bergmair_Fleites_00000011	Draft Letter from MindGeek addressing concerns raised by VISA
20	Bergmair_Fleites_00000024	Emails between MindGeek Employees and Patreus
20	Bergmair_Fleites_00000025	Letter from MindGeek addressing concerns raised by VISA to CardWorks Acquiring
20	Bergmair_Fleites_00000038	Emails between MindGeek Employees
20	Bergmair_Fleites_00000041	Emails between MindGeek Employees
20	Bergmair_Fleites_00000042	Letter from MindGeek to Mastercard
20	Bergmair_Fleites_00000080	Letter from MG Billing US Corp to partners addressing allegations
20	Bergmair_Fleites_00000084	Emails between MindGeek Employees and Patreus
20	Bergmair_Fleites_00000085	Letter from MindGeek addressing allegations
20	Bergmair_Fleites_00000087	Feras Antoon contact information
20	Bergmair_Fleites_00000088	Emails between MindGeek Employees and Patreus
20	Bergmair_Fleites_00000089	Letter from MindGeek addressing allegations
20	Bergmair_Fleites_00000091	Emails between MindGeek Employees and Patreus
20	Bergmair_Fleites_00000093	Letter from MindGeek addressing allegations
20	Bergmair_Fleites_00000095	Emails between MindGeek Employees, Patreus and Mitchell Silberberg & Knupp LLP
20	Bergmair_Fleites_00000097	Emails between MindGeek Employees and Patreus
20	Bergmair_Fleites_00000099	Spreadsheet titled "Guidelines"

Bowe Decl. Ex.	Bates	Document
20	Bergmair_Fleites_00000100	2 Spreadsheets containing keywords in relation to CSAM, etc.
20	Bergmair_Fleites_00000101	Emails between MindGeek Employees
20	Bergmair_Fleites_00000103	Emails between MindGeek Employees
20	Bergmair_Fleites_00000106	Emails between MindGeek Employees
20	Bergmair_Fleites_00000107	Draft Letter from MindGeek addressing concerns raised by VISA
20	Bergmair_Fleites_00000124	Feras Antoon contact information
20	Bergmair_Fleites_00000125	Emails between MindGeek Employees
20	Bergmair_Fleites_00000128	Emails between MindGeek Employees
20	Bergmair_Fleites_00000130	Emails between MindGeek Employees
20	Bergmair_Fleites_00000132	Emails between MindGeek Employees
20	Bergmair_Fleites_00000134	Teams Meeting Invite between MindGeek Employees
20	Bergmair_Fleites_00000135	Letter from MindGeek addressing concerns raised by VISA to CardWorks Acquiring
20	Bergmair_Fleites_00000139	Emails between MindGeek Employees and Patreus
20	Bergmair_Fleites_00000141	Emails between MindGeek Employees and Patreus
20	Bergmair_Fleites_00000142	"Partnerships and government contacts - Summary"
20	Bergmair_Fleites_00000144	Emails between MindGeek Employees and Patreus
20	Bergmair_Fleites_00000147	Emails between MindGeek Employees
20	Bergmair_Fleites_00000150	Spreadsheet titled "Black Channels," "Grey Channels"
20	Bergmair_Fleites_00000152	Emails between MindGeek Employees and Patreus

Bowe Decl. Ex.	Bates	Document
20	Bergmair_Fleites_00000154	Spreadsheet titled "Black Channels"
20	Bergmair_Fleites_00000156	Spreadsheet titled "Grey Channels"
20	Bergmair_Fleites_00000158	Spreadsheet titled "Black Channels"
20	Bergmair_Fleites_00000160	Spreadsheet titled "Grey Channels"
20	Bergmair_Fleites_00000162	Excel Sheets containing keywords
20	Bergmair_Fleites_00000164	Emails between MindGeek Employees
20	Bergmair_Fleites_00000165	June 30, 2020 letter from MindGeek to Merrick Bank addressing allegations
20	Bergmair_Fleites_00000177	Feras Antoon contact information
21	Bergmair_Fleites_00000982	Emails exchanged between MindGeek employees with the subject lines "week 2 transition milestones" and "PEI week 2 transition milestones"
22	Bergmair_Fleites_00000984	Emails exchanged between MindGeek employees with the subject line "Revised CIM and Refi Term sheet for Blake's"
23	Bergmair_Fleites_00001068	Emails exchanged between MindGeek employees with the subject line "2018 Strategy session-Day 3 Summary_V3"
24	Bergmair_Fleites_00001069	MindGeek 2018 - Strategy Brainstorming, Summary and Action Items
25	Bergmair_Fleites_00001088	Emails exchanged between MindGeek employees and Frank Di Rocco
26	Bergmair_Fleites_00001098	MindGeek S.a.r.l., Corporate Overview
27	Bergmair_Fleites_00001133	Emailed meeting invitation between MindGeek employees with the subject line "Meeting (Bernard, Feras, David, Eddy)"
28	Bergmair_Fleites_00001134	Emailed meeting invitation exchanged between MindGeek employees with the subject line "Spago Beverly Hills"

Bowe Decl. Ex.	Bates	Document
29	Bergmair_Fleites_00001220	Emails exchanged between MindGeek employees with the subject line "kink acquisition"
30	Bergmair_Fleites_00001235	Emails exchanged between MindGeek employees and Google with the subject line "Google Response to MindGeek RFP for GCP"
31	Bergmair_Fleites_00001263	Emails exchanged between MindGeek employees with the subject line "Online Harms White Paper"
32	Bergmair_Fleites_00001346	Emailed meeting invitation exchanged between MindGeek employees with the subject line "Invitation: HOLD Meeting MindGeek - Bernard Bergmair, Chairman of t... @ Fri May 17, 2019 11 am - 11:45 am (PDT) (bernard@patreus.com)"
33	Bergmair_Fleites_00001357	Emails exchanged between MindGeek employees with the subject line "Bank pack"
34	Bergmair_Fleites_00001380	August 2019 MindGeek S.a.r.l. Management Presentation
35	Bergmair_Fleites_00001419	April 2020 Emails exchanged between MindGeek employees with the subject line "Project OTHER"
36	Bergmair_Fleites_00001422	Emails exchanged between MindGeek employees with the subject line "May 2020 Budget"
37	Bergmair_Fleites_00001504	Emails exchanged between MindGeek employees with the subject line "Mastercard request"
38	Bergmair_Fleites_00001508	Emails exchanged between MindGeek employees with the subject line "Project OTHER"
39	Bergmair_Fleites_00001528	2020 Emails exchanged between MindGeek employees with the subject lines "[External] Upcoming calls" and "FW: Legal Tubes Audit update"

Bowe Decl. Ex.	Bates	Document
40	Bergmair_Fleites_00002292	Emails exchanged between MindGeek and Patreus with the subject line "ltr"
42	Bergmair_Fleites_00002294	Letter from RT Holding S.a.r.l. (represented by MindGeek S.a.r.l.) to Somerset Capital Limited concerning RT Holding S.a.r.l.'s dividends
43	Bergmair_Fleites_00002295	Letter from RT Holding S.a.r.l. (represented by MindGeek S.a.r.l.) to Somerset Capital Limited; "RE: Licensing IP Interational S.a.r.l."
44	Bergmair_Fleites_00002296	Letter from Somerset Capital Limited to RT Holding S.a.r.l. with the subject line "RE: payment directions"
45	Bergmair_Fleites_00002297	Emails exchanged between MindGeek and Patreus with the subject line "pmt direction"
46	Bergmair_Fleites_00002298	Emails exchanged between MindGeek and Patreus with the subject line "pmt direction"
48	Bergmair_Fleites_00002300	Letter re payment directions
49	Bergmair_Fleites_00002301	Emails exchanged between MindGeek and Patreus with the subject line "pmt direction"
51	Bergmair_Fleites_00002303	Letter from Somerset Capital Limited to RT Holding S.a.r.l. with the subject line "RE: payment directions"
52	Bergmair_Fleites_00002304	Emails exchanged between MindGeek and Patreus with the subject line "payment direction"
53	Bergmair_Fleites_00002305	Letter from Somerset Capital Limited to RT Holding S.a.r.l. with the subject line "RE: payment directions"
54	Bergmair_Fleites_00002306	Emails exchanged between MindGeek and Patreus with the subject line "payment direction"
55	Bergmair_Fleites_00002307	Emails exchanged between MindGeek and Patreus with the subject line "pmt ltr"

Bowe Decl. Ex.	Bates	Document
56	Bergmair_Fleites_00002308	Letter from Somerset Capital Limited to RT Holding S.a.r.l. with the subject line "RE: payment directions"
57	Bergmair_Fleites_00002309	Emails exchanged between MindGeek and Patreus with the subject line "payment direction"
58	Bergmair_Fleites_00002311	Emails exchanged between MindGeek and Patreus with the subject line "ltr"
59	Bergmair_Fleites_00002312	Letter from Somerset Capital Limited to RT Holding S.a.r.l. with the subject line "RE: payment directions"
60	Bergmair_Fleites_00002313	Emails exchanged between MindGeek and Patreus with the subject line "ltr"
61	Bergmair_Fleites_00002314	Letter from Somerset Capital Limited to RT Holding S.a.r.l. with the subject line "RE: payment directions"
62	Bergmair_Fleites_00002315	Emails exchanged between MindGeek and Patreus with the subject line "payment"
63	Bergmair_Fleites_00002316	Letter from RT Holding S.a.r.l. (represented by MindGeek S.a.r.l.) to Somerset Capital Limited; "RE: Licensing IP Interational S.a.r.l."
64	MindGeek_Fleites_00007123	February 14, 2017 Services Agreement
64	MindGeek_Fleites_00007137	Termination Agreement
64	MindGeek_Fleites_00007144	February 14, 2017 Server Cost Sharing Agreement
64	MindGeek_Fleites_00007148	Termination Agreement
64	MindGeek_Fleites_00007155	January 1, 2016 Services Agreement
64	MindGeek_Fleites_00007164	January 1, 2019 Services Agreement
64	MindGeek_Fleites_00007175	November 1, 2020 Services Agreement
64	MindGeek_Fleites_00007183	Server Cost Sharing Agreement

Bowe Decl. Ex.	Bates	Document
64	MindGeek_Fleites_00007186	First Amendment to the Server Cost Sharing Agreement
65	MindGeek_Fleites_00012267	IP License Agreement
67	MindGeek_Fleites_00001578	2014 MindGeek Group Financial Reporting Package
68	MindGeek_Fleites_00001579	2015 MindGeek Group Financial Reporting Package
69	MindGeek_Fleites_00001580	2016 MindGeek Group Financial Reporting Package
70	MindGeek_Fleites_00001581	2017 MindGeek Group Financial Reporting Package
71	MindGeek_Fleites_00001582	2018 MindGeek Group Financial Reporting Package
72	MindGeek_Fleites_00001583	2019 MindGeek Group Financial Reporting Package
73	MindGeek_Fleites_00001584	2020 MindGeek Group Financial Reporting Package
74	MindGeek_Fleites_00001585	2021 MindGeek Group Financial Reporting Package
75	MindGeek_Fleites_00000020	Further Amended and Restated Executive Employment Agreement 2018 - 2024 for Feras Antoon
76	MindGeek_Fleites_00000042	Further Amended and Restated Executive Employment Agreement between 9219-1568 Quebec Inc. and David Tassillo
77	Bergmair_Fleites_00002008	Emails exchanged between MindGeek and Polley Faith with the subject line "Inquiries from UK"
83	Bergmair_Fleites_00002328	Emails exchanged between MindGeek and Patreus with the subject line "ltr"
84	Bergmair_Fleites_00002329	Letter from RT Holding S.a.r.l. to Somerset Capital Limited concerning RT Holding S.a.r.l.'s dividends
85	Bergmair_Fleites_00002330	Letter from RT Holding S.a.r.l. to Somerset Capital Limited with the subject line "RE: RT Holding S.a.r.l. dividends"

Bowe Decl. Ex.	Bates	Document
86	Bergmair_Fleites_00002331	Emails exchanged between MindGeek and Patreus with the subject line "ltr"
87	Bergmair_Fleites_00002332	Letter from RT Holding S.a.r.l. to Somerset Capital Limited with the subject line "RE: RT Holding S.a.r.l. dividends"
88	Bergmair_Fleites_00002333	Emails exchanged between MindGeek and Patreus with the subject line "dividends"
91	Bergmair_Fleites_00002449	Emails exchanged between MindGeek and Patreus with the subject line "Summary of 2019 details"
93	Bergmair_Fleites_00002456	Emails exchanged between MindGeek and Patreus with the subject line "Re: div history"
94	Bergmair_Fleites_00002458	Excel Sheet with a Tab named "Shareholder dis from 2014"
95	Bergmair_Fleites_00002459	Emails exchanged between MindGeek and Patreus with the subject line "2019 distributions"
96	Bergmair_Fleites_00002460	Excel Sheet with Bergmair distributions
97	Bergmair_Fleites_00001429	MindGeek S.a.r.l., Consolidated Financial Statements
99	MindGeek_Fleites_00030407	March 1, 2010 Hosting Agreement
100	MindGeek_Fleites_00066311	Excel titled, "LIPI Expenses Allocation" (2019)
101	MindGeek_Fleites_00067772	Excel titled, "LIPI Expenses Allocation" (2014)
102	MindGeek_Fleites_00067773	Excel titled, "LIPI Expenses Allocation" (2015)
103	MindGeek_Fleites_00067774	Excel titled, "LIPI Expenses Allocation" (2016)
104	MindGeek_Fleites_00067775	Excel titled, "LIPI Expenses Allocation" (2017)
105	MindGeek_Fleites_00067776	Excel titled, "LIPI Expenses Allocation" (2018)
106	MindGeek_Fleites_00067777	Excel titled, "LIPI Expenses Allocation" (2020)
107	MindGeek_Fleites_00001814	October 18, 2013 Shareholders' Agreement

I. The Standard for Sealing Records

6. The federal common law right to access public records is “not absolute.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). In particular, “the common-law right of inspection has bowed before the power of a court to insure that its records are not used . . . as sources of business information that might harm a litigant’s competitive standing.” *Id.*

7. The Ninth Circuit has adopted the Restatement’s definition of trade secrets, which includes “any . . . compilation of information which is used in one’s business, and which gives [one] an opportunity to obtain an advantage over [other] competitors who do not know or use [the information].” Restatement of Torts § 757, cmt. b; *see also In re Elec. Arts, Inc.*, 298 F. App’x 568 (9th Cir. 2008) (quoting Restatement of Torts § 757, cmt. b and ordering document reflecting such trade secrets be filed under seal); *Velasco v. Chrysler Grp. LLC*, 2017 WL 445241, at *2 (C.D. Cal. Jan. 30, 2017) (district courts in the Ninth Circuit have sealed records containing information about proprietary business operations, and internal policies and strategies).

8. The standard for sealing documents and materials connected to dispositive motions, like Defendants’ motions to dismiss, is the “‘compelling reasons’ standard.” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003)); *Doe v. Walmart Inc.*, No. 18-CV-02125-LHK, 2019 WL 636362, at *2 (N.D. Cal. Feb. 11, 2019) (collecting cases applying the “compelling reasons” standard to exhibits to a motion to dismiss).

9. While there is a “strong presumption in favor of access to court records,” the public’s right of access “can be overridden given sufficiently compelling reasons for doing so.” *Foltz*, 331 F.3d at 1135. Compelling reasons exist where “‘court files might have become a vehicle for improper purposes,’ such as the use of records to

1 gratify private spite, promote public scandal, circulate libelous statements, or release
2 trade secrets.” *Kamakana*, 447 F.3d at 1179; *see also Bold Lmted. v. Rocket Resume,*
3 *Inc.*, No. 22-CV-01045-BLF, 2024 WL 1329921, at *2 (N.D. Cal. Mar. 27, 2024)
4 (“Compelling reasons exist to seal confidential business information, including non-
5 public information about a company’s business strategy, business transactions,
6 corporate structure, and finances.”); *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th
7 Cir. 2008) (finding sealable “business information that might harm a litigant’s
8 competitive standing”); *Sentylnl Therapeutics, Inc. v. U.S. Specialty Ins. Co.*, No.
9 19CV1667-LAB-AHG, 2021 WL 794271, at *3 (S.D. Cal. Mar. 1, 2021) (finding that
10 “protect[ing] [employees] from potential harassment ... forms a compelling reason
11 warranting sealing of the non-parties’ personal identifying information”); *Sheppard*
12 *v. Mandalay Bay, LLC*, No. 218CV01120RFBVCF, 2018 WL 7500285, at *1 (D.
13 Nev. Nov. 28, 2018) (recognizing “security and safety concerns as compelling
14 reasons to seal documents”); *In re BofI Holding, Inc. Sec. Litig.*, No.
15 315CV02324GPCSKSC, 2021 WL 3700744, at *1 (S.D. Cal. Aug. 18, 2021) (granting
16 application to seal identities of confidential witnesses who reportedly feared
17 retaliation and potential harassment); *Music Grp. Macao Com. Offshore Ltd. v. Foote,*
18 No. 14-CV-03078-JSC, 2015 WL 3993147, at *2 (N.D. Cal. June 30, 2015) (granting
19 motion to seal unredacted excerpts of deposition transcripts to protect privacy of non-
20 party former employees).

21 10. Further, the public’s interest is diminished where the documents are “not
22 relevant to the Court’s resolution of the [dispositive] motion.” *Music Grp. Macao*
23 *Com. Offshore Ltd.*, 2015 WL 3993147 at *8.

24 11. Finally, courts customarily permit litigants to seal documents where
25 redaction is impractical or impracticable. *Smith v. United States*, No. 1:22-CV-01032-
26 SAB, 2022 WL 3578568, at *3 (E.D. Cal. Aug. 19, 2022) (sealing tax return
27 documents in their entirety where “redacting the document would be impractical and
28

1 not leave any meaningful information available to the public.”); *N.R.S. by & through*
2 *A.S. v. Twin Rivers Unified Sch. Dist.*, No. 223CV01282MCEJDP, 2023 WL
3 7339140, at *1 (E.D. Cal. Oct. 19, 2023) (sealing an administrative record that had
4 confidential information “listed throughout making redaction impractical”); *Sullivan*
5 *v. Prudential Ins. Co. of Am.*, No. 2:12-CV-01173-GEB, 2012 WL 3763904, at *1
6 (E.D. Cal. Aug. 29, 2012) (parties’ representation that an administrative record was
7 “replete” with PII and that “redacting such information would be too burdensome”
8 was “sufficient to justify” sealing). This Court’s standing order, moreover, provides
9 “[d]ocuments that are not confidential or privileged in their entirety should not be
10 filed under seal if the confidential portions can be redacted and filed separately with
11 *a reasonable amount of effort.*” Hon. Wesley L. Hsu Standing Order for Newly
12 Assigned Civil Cases § 5(b) (emphasis added).

13 **II. The Materials Identified in Plaintiffs’ Application Should Be Sealed in**
14 **Their Entirety or Redacted Appropriately**

15 12. The materials designated “Confidential” or “Highly Confidential” by the
16 MindGeek Defendants identified in Plaintiffs’ Application contain non-public
17 information, proprietary information and trade secrets related to the operation of the
18 MindGeek Defendants’ businesses, including:

- 19 a. Paragraphs 11-13 of the Expert Declaration in Support of
20 Plaintiffs’ Omnibus Opposition, which refers to the MindGeek
21 entities’ confidential corporate structure and tax information
22 (Bowe Decl., Ex. 9);
23 b. Confidential information relating to the operations of the
24 MindGeek entities, including sensitive employment information,
25 allocation of operating expenses, partner and supplier information,
26 corporate/ownership structure, strategic plans and investment
27

- 1 strategies (Bowe Decl., Exs. 3, 4, 5, 13, 14, 16, 17, 18, 19, 26, 29,
2 33, 35, 40, 75, 76, 100, 101, 102, 103, 104, 105, 106);
- 3 c. Confidential intellectual property licensing information (Bowe
4 Decl., Exs. 4, 65);
- 5 d. Confidential information relating to the payments of dividends and
6 compensation by the MindGeek entities, economic rights of
7 shareholders, the agreed-upon governance of the MindGeek
8 entities and a share purchase agreement (Bowe Decl., Exs. 3, 4, 12,
9 19, 42, 45, 46, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62,
10 63, 83, 84, 85, 86, 87, 88, 91, 93, 94, 95, 96, 107);
- 11 e. Confidential business strategy regarding relationships with vendors
12 that, if disclosed, could harm the MindGeek Defendants'
13 competitive standing, and communications regarding internal
14 business practices related to human moderation of content
15 uploaded on the MindGeek websites, which should not be made
16 public in the interest of public safety, to ensure the efficacy of the
17 moderation policies to block content in violation of the Pornhub
18 Terms of Service (Bowe Decl., Exs. 3, 5, 19, 20, 21, 24, 27, 28, 30,
19 31, 32, 37, 38, 39, 77);
- 20 f. Confidential details of, and actions taken related to, a loan
21 agreement between certain MindGeek entities and third-party
22 lenders (Bowe Decl., Exs. 3, 4);
- 23 g. Confidential and sensitive audited financial statements, financial
24 reporting packages and financial information of certain MindGeek
25 entities and executives (Bowe Decl., Exs. 3, 4, 7, 10, 11, 15, 22,
26 36, 43, 44, 67, 68, 69, 70, 71, 72, 73, 74, 97);
- 27
28

- h. Confidential terms of service agreements, hosting agreements, server cost sharing agreements and termination agreements (Bowe Decl., Exs. 64, 99);
- i. Confidential corporate structuring memorandums, a management presentation, a financial transfer-pricing study prepared by Raymond Chabot Grant Thornton LLP and its affiliates for tax planning purposes, and other tax planning advice (Bowe Decl., Exs. 1, 3, 6, 8, 34); and
- j. Sensitive PII about employees and non-parties, such as names and titles (Bowe Decl., Exs. 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 42, 45, 46, 49, 52, 54, 55, 57, 58, 60, 62, 77, 83, 86, 88, 91, 93, 95).

13. Additionally, the redacted text in the Omnibus Opposition and Declaration of Michael J. Bowe references the above listed confidential materials.

14. The materials designated “Confidential” or “Highly Confidential” by the MindGeek Defendants as identified in Plaintiffs’ Application implicate the MindGeek Defendants’ sensitive and confidential internal business practices and financial information. Further, the 107 exhibits attached to the Declaration of Michael J. Bowe are voluminous and contain confidential information throughout, making redaction impractical. Thus, the MindGeek Defendants seek an order sealing and/or redacting this information from the public record.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 16, 2024 in Los Angeles, California.

/s/ Esteban Morales Fabila
Esteban Morales Fabila